

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 95011

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-033-95

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
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Regulations Only

Effective Date _____

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Governor's Signature

Nevada State Environmental Commission

Classification [] Proposed [] Adopted By Agency [xx] Temporary [] Emergency []

Brief description of action: **Petition 95011** permanently amends Nevada Administrative Code (NAC) 445B.875 to 445B.897, "Practice Before the Commission", by adding a new provision to clarify procedures and establish the conditions for rehearing or reconsideration of Commission appeal hearings.

Authority citation other than 233B: NRS 445.451 - 445.477

Notice date: August 31, September 6, and September 12, 1995

Hearing date: October 3, 1995

Date of Adoption of Agency: October 3, 1995

**LEGISLATIVE REVIEW OF ADOPTED
REGULATIONS AS REQUIRED
BY THE NEVADA ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

**PETITION 95011
LCB FILE R-033-95**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445B.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 95011 (R-033-95) was noticed three (3) times: August 31, September 6, 1995 and September 12, 1995 in the Las Vegas Review and Reno Gazette-Journal newspapers as a permanent petition. This petition was previously noticed as a temporary petition. No public comment was received. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670, or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

2. The number persons who:

- | | | |
|------------|---|----|
| (a) | Attended each hearing; | 23 |
| (b) | Testified at each hearing: | 14 |
| (c) | Submitted to the agency written comments: No comments were submitted for this petition. Overall, six comments were submitted to the Commission at the hearing when this petition was adopted. Also see petitions 95003, 96001 and 96002 for a discussion on the comments received. | |

3. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. No comments were received from the affected businesses. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (702) 687-4670 or writing in to the Commission at 333 W. Nye Ln., Room 128, Carson City, Nevada 89710.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted at the State Environmental Commission hearing on October 3, 1995 with no changes proposed by the public, businesses or the agency. This regulations was previously adopted as a temporary regulation on June 20, 1995.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.
 - a. Since this regulation changes the rules of practice of the State Environmental Commission no adverse or economic beneficial effect is expected.
 - b. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations which the proposed amendments duplicate. This regulation derives from the authority of the Environmental Commission to establish Rules of Practice, therefore the issue of overlap or duplicate federal regulation is not applicable.

8. Whether this regulation contains provisions which are more stringent than a federal regulation which regulates the same activity and a summary of such provisions.

Since the provision relates to the Rules of Practice of the Environmental Commission, therefore the issues raised by this question 8 are not applicable to this rule making.

9. Whether this regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

No fees are established or increased by this regulation.

ADOPTED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION

LCB File No. R033-95

Explanation: Matter in *italics* is new. Matter in [] brackets is material to be omitted.

AUTHORITY: NRS 445.461

Section 1. Chapter 445B of NAC is hereby amended by adding thereto a new section to read as follows:

1. *A petition for reconsideration must specifically:*

(a) Identify each portion of the challenged decision which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

2. *A petition for rehearing must:*

(a) Allege that a decision is in error because of an incomplete or inaccurate record;

(b) Specifically set forth the nature and purpose of any additional evidence to be introduced; and

(c) Show that such evidence is not merely cumulative and could not have been introduced at the hearing.

3. *A petition for reconsideration or rehearing of a decision must be served upon all parties of record within fifteen days after the effective date of the decision.*

4. *An answer to a petition for reconsideration or rehearing may be filed with the commission by any party of record in the proceeding within five days after the filing of the petition. The answer must be confined to the issues contained in the petition and served upon all parties of record. Proof of service must be attached to the answer.*

5. *The commission will grant or deny a petition for reconsideration or rehearing within ten days after the date of the filing of the petition. The denial of a petition may be on the record without a separate written decision.*

6. *Unless otherwise ordered by the commission, the filing of a petition for reconsideration or rehearing or the granting of such a petition does not excuse compliance with, or suspend the effectiveness of, the challenged decision.*

7. *If the commission grants a petition for reconsideration, it will re-examine the record and decision with regard to the issues on which reconsideration was granted and issue a modified final decision or affirm its original decision within twenty days after the petition is granted.*

8. *If the commission grants a petition for rehearing, it will, within 20 days thereafter, conduct a hearing to allow the parties to present additional evidence and will issue a modified final decision or affirm its original decision.*

9. *A modified final decision of the commission issued upon reconsideration or rehearing will incorporate those portions of the original decision which are not changed by the modified final decision.*

10. *A modified final decision of the commission or the affirmation of an original decision of the commission is a final decision for the purposes of judicial review.*

Sec. 2. NAC 445B.874 is hereby amended to read as follows:

445B.875 1. As used in NAC 445B.875 to 445B.897, inclusive, ***and section 1 of this regulation***, unless the context otherwise requires, the terms defined in NAC 445B.877 to 445B.884, inclusive, have the meanings ascribed to them in those sections.

2. The meanings ascribed to words not included in NAC 445B.877 to 445B.884, inclusive, are in accordance with applicable sections of NAC governing air quality, water pollution or solid waste management and of chapters 444 and 445 of NRS.

END OF LCB R033-95